IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 231 OF 2005

Mrs.Usha Chandrashekhar Jhade. ... Appellant.

V/s.

Kandivli Industrial Estate
Co-operative Housing Society. ... Respondent.

Mr.Sanglikar for the appellant.

Mr.R.V.Govilkar for the respondent.

CORAM : A.S.Oka, J.

DATED : 7th March, 2005.

P.C. :

. Admit.

2. Shri Govilkar waives service for the respondent.

3. By consent of parties taken up for hearing forthwith.

4. By the order impugned the learned trial Judge has declined to grant ad-interim relief in favour of the Appellant - Plaintiff.

5. In the impugned order the learned trial Judge has observed as under:

> ".....Inspite of repeated telegrams as the deft. is not appearing, a possibility is that such Co-op. Industrial Society must not be in existence at all. That seems to

be the purport of part 3 of a notice which is at Ex.C.

As presently the demolition work of encroachment as is going on in Mumbai possibility is that this encroachment also could be demolished and on that background, I am of the view that the courts are required to be extremely cautious while granting an int.order because under the pretext that some injunction is there possibility is that those who are legally authorised to demolish the construction could be stalled to demolish such demolition work. Besides, it is also a fact that as I have already observed that Govt. is a necessary party as the encroachment is on the Govt.land I am not inclined to pass any Int.order. Hence, the order:-

6. Shri Govilkar, learned counsel appearing for the Respondent states that the Respondent society is very much in existence. He further submits that he is not aware whether notice of motion was duly served on the Respondent.

7. The perusal of the impugned order shows that the learned trial Judge has recorded a finding that the Appellant has encroached upon the Government land. The learned trial Judge proceeded on assumption that the Respondent society may not be in existence and, therefore, the learned Judge was of the view that the Appellant was trying to obtain relief against a non-existing society.

8. The perusal of the plaint shows that the relief is claimed only against the Respondent society. The Respondent society has not appeared

when the learned Judge considered the prayer for interim relief.

9. Considering the findings recorded by the learned trial Judge which is referred to hereinabove it is necessary that the learned trial Judge to consider the prayer for ad-interim relief after hearing the Respondent. It will be open for the Respondent to raise all permissible contentions including the contention that the State Government is a necessary and proper party to the suit.

10. Hence I pass the following order :

ORDER

(i) The impugned order is quashed and set aside. The parties will appear before the learned trial Judge on 15th March 2005 without a specific notice being served on them. It will be open for the Respondent to file an affidavit in reply and documents before the learned trial Judge.

(ii) The learned trial Judge will hear the prayer made by the Appellant for grant of ad-interim relief afresh and pass an appropriate order.

(iii) All the contentions on merit are expressly kept open.

(iv) Till the learned trial Judge passes appropriate order, ad-interim relief granted by this Court on 15th February 2005 will continue to operate.

11. The Appeal is disposed of in the above terms with no order as to costs.

12. The parties and the concerned Court to act on an authenticated copy of this order.

*****

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 222 OF 2005
IN
APPEAL FROM ORDER NO. 231 OF 2005

Mrs.Usha Chandrashekhar Jhade. ... Appellant.

V/s.

Kandivli Industrial Estate
Co-operative Housing Society. ... Respondent.

Mr.Sanglikar for the appellant.

Mr.R.V.Govilkar for the respondent.

CORAM : A.S.Oka, J.

DATED : 7th March, 2005.

P.C. :

. In view of disposal of the Appeal, this civil application does not survive. The civil application is rejected.

*****